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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189023
Party	Plaintiff Whataburger Partnership
Correspondence Address	Christopher Kelly Wiley Rein LLP 1776 K St NW Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jennifer L. Elgin
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Signature	/JLE/
Date	01/28/2011
Attachments	Notices_of_Reliance-7.pdf (12 pages)(596912 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WHATABURGER PARTNERSHIP)	
)	
Opposer,)	
)	Opp. No.: 91/189,023
v.)	Ser. No.: 77/494,179
)	Mark: WHATTA WING!
SARKIS AVAKIAN,)	
)	
Applicant.)	

Opposer's Seventh Notice of Reliance

Pursuant to Rule 2.120(j) of the Trademark Rules of Practice, 37 C.F.R. § 2.120(j), Opposer WHATABURGER PARTNERSHIP, hereby gives notice of its reliance upon "Applicant's Objections and Responses to Opposer's First Set of Requests for Admission to Applicant", as follows:


Request No.	Relevance
6	Admitting WHATA and WHATTA are phonetically identical – relevant to comparison of marks
12	Admitting that Applicant sells hamburgers and cheeseburgers under opposed mark – relevant to relatedness of goods and services
17	Admitting that Applicant has disclaimed "wing" apart from the mark as shown in the opposed application – relevant to comparison of marks
18	Admitting that Applicant sells chicken wings, chicken tenders and chicken sandwiches under opposed mark – relevant to relatedness of goods and services
25	Admitting that opposed application contains not limitations as to channels of trade – relevant to channels of trade
31	Admitting that Applicant operates a single restaurant under opposed mark – relevant to opportunity for actual confusion
37	Admitting that Applicant intends to expand its restaurant concept – relevant to likelihood of eventual confusion
38	Admitting that Applicant advertises its services over the internet – relevant to channels of trade

Request No.	Relevance
39	Admitting that Opposer advertises its services over the internet – relevant to channels of trade

These responses (redacted) are attached as Exhibit G hereto.

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: 
Christopher Kelly
Jennifer L. Elgin
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Whataburger Partnership

Dated: January 28, 2011

EXHIBIT G

WHATABURGER PARTNERSHIP)	Opposition No. 91189023
)	
Opposer,)	
)	
v.)	Serial No. 77/494179
)	Mark: Whatta Wing!
SARKIS AVAKIAN,)	
)	
Applicant.)	
)	

APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Applicant Sarkis Avakian d/b/a Whatta Wing! (“Applicant” or “Whatta Wing!”) hereby responds to the First Set of Requests for Admission served by Whataburger Partnership (“Opposer” or “Whataburger”).

GENERAL OBJECTIONS

The following General Objections apply to and are incorporated by reference in each and every response to Opposer's Requests For Admission.

1. Applicant objects to the Opposer's Requests and "Definitions" and "Instructions" to the extent they attempt to impose any obligations different from or in addition to those obligations imposed by the Federal Rules of Civil Procedure or the Rules of the Trademark Trial and Appeal Board.

2. Applicant objects to each Request to the extent it is premature in that fact discovery is ongoing, and expert discovery has not yet commenced.

REQUEST NO. 6 Admit that Applicant's Mark and Opposer's Marks contain the phonetically identical WHATA/WHATTA formative.

RESPONSE: Admitted.

(b) (7)(C), (b) (7)(D)

(b) (7)(C), (b) (7)(D)

10/10/2019

10/10/2016

[REDACTED]

██████████

RESPONSE: Admitted.

REQUEST NO. 18 Admit that Applicant sells chicken wings, chicken tenders and chicken sandwiches in its restaurant under Applicant's Mark.

RESPONSE: Admitted.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REQUEST NO. 25 Admit that the recitation of services in opposed application Ser. No. 77/494,179 contains no limitations regarding the manner of or channels of trade through which Applicant's services are sold.

RESPONSE: Applicant objects on the grounds that the referenced document speaks for itself. Subject to the foregoing objections, the request is admitted.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Opposer's [REDACTED]

[REDACTED]

[REDACTED]

REQUEST NO. 31 Admit that Applicant operates a single restaurant under Applicant's Mark.

RESPONSE: Admitted.

[REDACTED]



Respectfully submitted,

SARKIS AVAKIAN

By his Attorneys,

Dated: August 28, 2009

/s/ Sheryl Koval Garko
Mark S. Puzella
Robert M. O'Connell, Jr.
Chelsea Teachout
Sheryl Koval Garko
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881
Tel: 617/570-1000
Fax: 617/523-1231

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing APPLICANT'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION upon Opposer's counsel of record by depositing one copy thereof in a sealed envelope in the United States mail, first-class, postage prepaid, on August 28, 2009, addressed as follows:

Christopher Kelly
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

/s/ Sheryl Koval Garko _____

Sheryl Koval Garko

CERTIFICATE OF SERVICE

I hereby certify that a copy of OPPOSER'S FIRST NOTICE OF RELIANCE, OPPOSER'S SECOND NOTICE OF RELIANCE, OPPOSER'S THIRD NOTICE OF RELIANCE, OPPOSER'S FOURTH NOTICE OF RELIANCE, OPPOSER'S FIFTH NOTICE OF RELIANCE, OPPOSER'S SIXTH NOTICE OF RELIANCE and OPPOSER'S SEVENTH NOTICE OF RELIANCE by causing a copy thereof to be sent via electronic mail to the following address:

Sheryl Koval Garko
GOODWIN PROCTER, LLP
Exchange Place
53 State Street
Boston, MA 02109-2881
sgarko@goodwinproctor.com

This 28th day of January 2011.


Jennifer L. Elgin